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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1443rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 8 March 2001, at 3 p.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 3.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

International Women's Day

1. The CHAIRMAN outlined the history of the proclamation of 8 March as United Nations Day for Women's Rights and the adoption and entry into force of the Convention on the Elimination of All Forms of Discrimination against Women and subsequently of the Optional Protocol thereto, and referred to the three world conferences on women and the work of the treaty monitoring body, the Committee on the Elimination of Discrimination against Women.

2. In March 2000 the Committee on the Elimination of Racial Discrimination had adopted General Recommendation XXV on gender-related dimensions of racial discrimination. In the General Recommendation the Committee noted that there were circumstances in which racial discrimination only or primarily affected women, or affected women differently from men. Such racial discrimination would often escape detection if there was no explicit recognition or acknowledgement of the different life experiences of women and men in public and private life. Recognizing that some forms of racial discrimination had a unique and specific impact on women, the Committee had stated that it would endeavour in its work to take into account gender factors or issues which might be interlinked with racial discrimination, and would enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its sessional working methods and texts. Accordingly States parties reporting to the Committee were requested to describe factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention.

3. The Committee endorsed the statement to mark International Women's Day 2001 made by the United Nations High Commissioner for Human Rights in which she had called upon all States to accept the international framework for the fight against discrimination and to ratify the International Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol as well as the International Convention on the Elimination of All Forms of Racial Discrimination. She had also appealed to them to review their laws and policies and repeal those that disproportionately affected women, particularly those from disadvantaged racial groups. States should pay attention to the specific needs of certain groups, such as indigenous women, women refugees, migrants and trafficked and displaced women and develop education and training programmes to eliminate discriminatory attitudes.

4. He conveyed his best wishes to the two women Committee members and to all women present and elsewhere, expressing his solidarity to them in their fight for equality and justice.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial and second periodic reports of Japan (CERD/C/350/Add.2)

5. At the invitation of the Chairman Mr. Haraguchi, Ms. Ozaki, Mr. Katsura, Mr. Kaitani, Mr. Watanabe, Mr. Beppu, Mr. Kobayashi, Mr. Chiba, Mr. Iwanade, Mr. Seto, Mr. Shibuya, Mr. Katahira, Mr. Coyori, Mr. Horino, Mr. Wada, Ms. Katagiri and Ms. Maeda (Japan) took places at the Committee table.

6. Mr. HARAGUCHI (Japan) said that the long-standing problem of racial discrimination had been compounded by new forms of racial discrimination resulting from the phenomenon of increased migration and causing serious social problems in many countries. Referring to his own country, he said that, in addition to discrimination against the Utari, Korean residents and others, Japan now had to cope with problems caused by the large influx of foreign workers, mainly from Asian countries, in the previous decade. The elimination of all forms of racial discrimination, old and new, called for constant vigilance.

7. The Constitution of Japan clearly stipulated that all persons were equal before the law, irrespective of their race or other factors. As a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, Japan was deeply committed to building a society based on the principles enshrined therein, without any form of racial or ethnic discrimination, and to ensuring respect for the individual and the full development of his or her potential. Japan had also played an active role in the adoption of relevant United Nations resolutions and contributed to the Trust Fund for the Programme for the Decade to Combat Racism and Racial Discrimination. Japan shared the views of the High Commissioner for Human Rights that the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be forward-looking, constructive, and practically focused with the aim of resolving present and future racial discrimination problems. The declaration and programme of action to be adopted at the World Conference should guide each country effectively in its efforts to eliminate racial discrimination in the twenty-first century. As it had done at the Asian regional preparatory conference, Japan intended to play an active role in the World Conference.

8. During the various stages of preparation for consideration of its report, the Japanese Government had carefully examined its efforts on racial matters from various standpoints through exchanges of views with the national non-governmental organizations (NGOs) concerned. It looked forward to a frank and constructive dialogue with the Committee and would welcome its suggestions.

9. Ms. OZAKI (Japan) said that she would be essentially updating information contained in Japan's initial and second periodic reports (CERD/3/350/Add.2), submitted in June 1999. The Ainu people maintained their ethnic identity through continuous efforts to pass on their own language and culture. In 1999 their population in the Hokkaido area had been estimated at 23,767. With regard to their living conditions, the ratio of public assistance recipients per 1,000 members of the population had stood at 37.2 per cent - a slight decrease from

the 1993 ratio. The gap in living standards between the Ainu people and others residing in those areas had narrowed considerably since the early 1970s, demonstrating the positive effects of the Hokkaido Utari Measures, described in paragraph 13 of the report. The fiscal year 2001 would be the last year of the Fourth Hokkaido Utari Welfare Measures and a study of their overall results was under way.

10. She outlined the background to Korean immigration and the status of Korean residents and their descendants in Japan, as described in paragraphs 32 to 37 of the report. Following the signing of the memorandum by the foreign ministers of Japan and the Republic of Korea in 1991 (para. 37), high-level consultations had continued on an annual basis, with the ninth consultation held in Seoul in December 2000. Following those consultations the Japanese Government had endeavoured to create stability for Korean residents in Japan and grant them favourable conditions, notably in terms of special permanent resident status, affecting the period of validity of re-entry permits and the landing examination (paras. 39 to 43).

11. The Constitution of Japan guaranteed fundamental human rights to all foreign nationals residing in Japan except for the rights which by their nature were interpreted as being applicable to Japanese nationals only. The Government actively pursued the goals of ensuring equal rights and opportunities for all foreign nationals, respecting their own cultures and values, and promoting mutual understanding. Quoting paragraphs 27 to 29 of the report, she said that equality of rights extended to education, employment and labour conditions, public housing subject to certain conditions, social security, national pension and health insurance, child and maternity allowances and public assistance.

12. Regarding remedies and compensation measures for human rights infringements, the Constitution stipulated respect for fundamental human rights and freedoms (art. 11) and equality under the law and the prohibition of racial discrimination (art. 14, para. 1). Any public officials or public entities inflicting harm on a person on grounds of race in the course of their duties were liable to provide fair compensation for the damage according to the Law concerning State Liability for Compensation. In accordance with the Civil Code, racially discriminatory acts infringing human rights might be deemed null and void (arts. 1 and 90) and any person who violated the rights of others by racially discriminatory conduct must give fair and proper compensation for any damage caused (art. 709). Article 32 of the Constitution guaranteed all persons the right of access to the courts; victims of racial discrimination could seek redress under the relevant legislation.

13. In accordance with the Code of Criminal Procedure where the racially discriminatory conduct constituted a crime, only public prosecutors could initiate prosecution (art. 247). However, the injured party (art. 230) or any other person alleging to be a victim of such an offence (art. 239) could file a complaint with the investigative authorities. They would investigate the case fairly on the basis of such complaints and, if sufficient evidence for prosecution was found, the public prosecutor would pursue the case in court.

14. The Human Rights Bureau in the Ministry of Justice was the main organ responsible for human rights protection and promotion. It had regional offices in every prefecture; furthermore, each of those offices had field offices, of which there were a total of around 280. Those offices worked to protect and promote human rights in the communities so as to facilitate access to

the system for the victims of human rights infringements occurring in day-to-day life. Some 14,000 Civil Liberties Commissioners also operated throughout the country. The network had been set up with a view to monitoring human rights infringements and promoting human rights awareness with the cooperation of knowledgeable citizens of good character chosen from the local communities. As the number of foreigners in Japan increased, new types of human rights problems arose. To cope with the growing demand by foreigners for counselling, facilities had been set up in the eight main Legal Affairs Bureaux to provide counselling for foreigners with the services of English and Chinese translators. The smaller district legal affairs offices offered such services on an occasional basis, for instance during Human Rights Week. Such services were provided free of charge and with due regard for the privacy of the persons concerned.

15. The Government had undertaken various human rights awareness activities since its accession to the Convention and in connection with the proclamation of the United Nations Decade for Human Rights Education. The Council for Human Rights Promotion, established in the Ministry of Justice in 1997, was currently examining the relief system for human rights violations and had issued an interim report in November 2000. The report pointed to a need for an independent relief mechanism, with reference to relevant international and national standards. In addition to the counselling, mediation and guidance provided so far, other relief measures were required, such as conciliation, arbitration, warning and publication, as well as litigation assistance for the victims of human rights infringements including racial discrimination. In particular, the Council was considering the possibility of introducing a relief measure with legal effect, namely a human rights redress institution to assist victims in upholding their rights through court proceedings where recourse had not been available through the method of warning and publication. The Council was in the process of drafting a report on the relief system in response to comments from the general public on the interim report. The Government would endeavour to implement the recommendations made by the Council on the subject.

16. Japan had entered a reservation to article 4 (a) and (b) of the Convention, to the effect that it would fulfil the obligations under those provisions so long as that was compatible with the guarantee of rights to freedom of assembly, association and expression and other rights under the Constitution of Japan. The practices listed in article 4 (a) and (b) were punishable provided they did not conflict with the Constitution; to that extent Japan complied with its obligation under the Convention. The reservation had been entered because the provisions of the article could cover a variety of practices under diverse conditions. The Government of Japan held that respect for human rights by the general public should essentially be enhanced through free speech, guaranteed by freedom of expression; and the most appropriate way for society to eliminate existing discrimination and prejudice was by itself and of its own free will, by observing the constitutional provision prohibiting the abuse of freedom and rights. It was hoped that public-relations activities carried out by the Government would facilitate such self-cleansing action in society.

17. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) welcomed the high-level delegation of Japan, commending its informative introduction to the country's initial report. Japan's incipient dialogue with the Committee was an important event not only for the country and the Committee, but for the international community as a whole and he looked forward to a constructive exchange.

18. Commending the constitutional principles of pacifism, respect for the human rights of all persons and non-discrimination, he asked whether, under article 98 of the Constitution, the International Convention on the Elimination of All Forms of Racial Discrimination was directly applicable by the courts. He welcomed the demographic data provided. Japan was a very densely populated country consisting of a variety of ethnic groups, not to mention the growing number of foreigners, who currently accounted for 1.2 per cent of the population. He noted that the authorities allowed refugees from Viet Nam, Laos and Cambodia to settle in Japan.

19. According to the Ainu Association of Hokkaido, the Ainu (also known as Utari), who were the original inhabitants of Japan and now numbered 50,000, had their own language, customs and culture, and their livelihood was basically restricted to fishing, hunting and harvesting. Traditionally discriminated against, they had resorted to adopting Japanese names to avoid identification and had protested at measures to assimilate them and oblige them to adopt values other than their own. The Committee would be grateful for further information concerning the positive measures taken by the Hokkaido Prefecture to improve the Ainu's lot, as well as the practical results. It would also like to know what action was being taken in the light of the reported failure of the native land protection laws. Could the delegation supply further information on the application of the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination of and Advocacy for the Traditions of the Ainu and the Ainu Culture, which apparently did not recognize the Ainu as an indigenous people? It was also a matter of concern that the Ainu were still subject to outright discriminatory practices relating to their livelihood, as well as to more subtle discrimination, such as the practice of omusha, whereby Japanese groups attempted to entice Ainu with gifts in order to obtain their unconditional obedience. Indeed, Ainu women were doubly victimized, since they were also frequently sought for sexual favours.

20. The Immigration Control and Refugee Recognition Act established closed categories of foreigners, thereby violating article 5 (e) (i) of the Convention, as well as establishing categories that might reflect ethnic criteria based on national origin. Housing authorities sometimes required presentation of a special document held only by Japanese, thus impeding foreigners' access to housing of their choice. Could the delegation also clarify the curious statement in the report that 91.6 per cent of foreigners from Asian countries were classified as "entertainers"? Also, if it was indeed the precarious situation of Japanese workers that precluded the admission of foreigners for unskilled labour, such a policy must certainly not be based on ethnic or racial considerations and, once the situation stabilized, Japan would be expected to open its doors to such foreigners. Like many developed countries, Japan had its share of "illegal" workers - currently numbering 276,810 - who were either unemployed or performed ill-paid marginal jobs. Any measures to regulate the situation should respect those persons' basic human rights, with the brunt of the penalties imposed on traffickers who exploited them rather than on the immigrants. The Committee would like further information concerning the measures taken to protect the basic human and cultural rights of foreign residents and promote mutual understanding, as well as on the education on offer to foreign children in public schools.

21. The Committee recommended that the State party should intensify measures to eradicate discrimination against foreigners - mainly in regard to housing and access to public swimming pools - on the basis of linguistic, religious or cultural differences. Foreigners were often categorically excluded from some restaurants and it was not unknown for some to display

notices admitting only foreigners who did not appear undesirable. Koreans, who constituted about one third of Japan's foreign population, were also allegedly subject to discrimination and they, too, were often obliged to change their name for fear of such practices. The Committee therefore welcomed the talks between Japan and the Republic of Korea on the legal status of Korean refugees and on the scope of the pertinent Immigration Control Special Law. It urged the authorities to intensify measures to preserve Korean cultural values, promote better understanding and remedy existing inequalities.

22. He drew the Government's attention to Amnesty International's charge that asylum-seekers were often persecuted by the forces of law and order, arrested on the flimsiest of charges and imprisoned in inhumane conditions, sometimes resulting in death. The Committee would like to know more about the situation and whether such treatment was racially inspired. In the light of the statement that all refugees in Japan were Indo-Chinese, it was to be hoped that it was not policy to afford them special treatment and that Japan's doors were open to other potential refugees.

23. With regard to article 2 of the Convention, he sought further information on efforts to combat racial discrimination by public authorities and, particularly, by individuals. More information was needed about the functions and attributes of the Council for Human Rights Promotion and its success in promoting human rights, particularly with regard to the prohibition of racial discrimination and compensation to victims. With reference to paragraph 64 of the report, exactly how could a discriminatory act that was deemed to be contrary to public policy or good morals be nullified? Following the nullification, was a criminal trial required for the perpetrator to be sanctioned?

24. In connection with article 3, he commended Japan's contributions to the various programmes and funds established in southern Africa to help eradicate discriminatory practices against people of the region and enhance their living conditions. Pointing out that article 3 concerned segregation in a more general sense, he wished to alert the Government to the creation and maintenance in many urban areas of sectors reserved for foreigners. In regard to article 4, which was binding on all States parties, the Committee's attitude had traditionally been that the right of association and freedom of expression were not absolute and could not be invoked, for example, to disrupt legitimately established order or foment internal discord. It had expressly stated in its General Recommendation XV that the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression. Hence, States parties were required to enact and effectively enforce appropriate legislation. While the Penal Code did sanction many offences that might have racist or ethnic connotations, its provisions were excessively general, whereas the Convention required States parties to issue a specific provision making the dissemination of racist ideas an offence. It was vital for Japan to fulfil that obligation, especially in view of the reported racist acts against Korean students. Although violence and subversion were punishable by law, Japan was called upon, pursuant to article 4 (b) of the Convention, to declare illegal and prohibit organizations that promoted or incited all forms of racial discrimination. In the light of the foregoing, the Japanese Government was requested to withdraw its reservation to that provision. In the field of information, action taken under the Broadcast Law and the Code of Ethics for use of the Internet were positive steps towards the eradication of slander or racial hatred.

25. Notwithstanding the copious data supplied in connection with article 5, where article 4 was concerned, it was disturbing that Governor Ishihara of Tokyo had been allowed, with impunity from the Government, to make slanderous comments linking the rising rate of violent crime in Japan to "sangokujins", allegedly illegal immigrants from former Japanese colonies. Exclusion was a form of racial discrimination; on the contrary, foreigners must, without discrimination, be encouraged, to participate actively in the life of their adopted country despite cultural differences. As to the right to vote, since the Supreme Court's 1995 ruling that foreigners registered as permanent residents could vote in local elections had been variously interpreted, he recommended that the authorities should standardize the situation for one and all. A judicious step would be for all local authorities to establish foreign citizens' representative councils, as two of them had done. Japanese law should also explicitly recognize the right of Japanese citizens to return to their country and not only to leave it. In addition, the Committee would be grateful for further information concerning the counselling and assistance for settlement provided by the human rights organs of the Ministry of Justice in cases of alleged discrimination based on race or ethnicity. Had there been cases in which those measures had been applied? More information was also needed on the workings of the system whereby the same qualifications for tenant applications as those for Japanese residents must apply to foreigners with registered domicile. Also, the administrative measure that afforded protection to permanent and settled residents should be passed into law.

26. With regard to education, it was unsatisfactory that foreign children were not obliged to attend school but were merely accepted at public schools. The law should impose on them the same obligation as was incumbent on Japanese children in order to avoid different educational standards or separate education systems. Did the statement contained in paragraph 143 of the report imply that racial discrimination was prohibited in registered hotels but condoned in those that were not?

27. On the subject of article 6 of the Convention, it was not enough that only the Constitution and Penal Code gave victims of racial discrimination access to the courts. That right should be specifically enshrined in the domestic legislation. The rulings in cases heard by the Yokohama and Osaka District Courts were gratifying, as was the information concerning the two cases cited in paragraph 162 of the report. However, it was incumbent upon the Japanese Government to ensure that there was no recurrence of such acts and to keep the Committee abreast of any that occurred and the action taken to prevent or punish them. He expressed doubts about the effectiveness of a system of legal aid which required the beneficiaries to repay the costs of such aid in full, and sought more detailed information concerning the administrative organizations responsible for obtaining redress for victims of racial discrimination. Indeed, was the Civil Liberties Bureau of the Ministry of Justice among them? It was to be hoped that investigation of human rights infringements embraced racially discriminatory acts. Could the delegation confirm whether, since such an investigation had no legal status, the voluntary cooperation needed from the persons concerned referred only to the victims? He wondered whether the conscience-searching required of human rights violators had produced practical results and whether some more objective measure was not required.

28. He applauded the positive measures taken by the Government, in regard to implementation of article 7, for enhancing awareness of human rights, eliminating racial discrimination and promoting Ainu culture, all of which were to be encouraged, as was the

dissemination of the country's initial report. The Committee hoped that its comments and concluding observations would be equally publicized. At the same time, it recommended that the State party should redouble its efforts to inform and educate all law enforcement officials, law students and anyone in direct contact with minority groups.

29. The report was silent on important issues, such as that of the Buraku, who, although of Japanese ethnic origin, were said to be traditionally treated as pariahs and relegated to the most demeaning jobs, while "Buraku Lists" were circulated to private companies, thus denying that group access to contractual employment. In those circumstances, many had committed suicide. Surprisingly, the authorities had not mentioned their plight, which was well documented both abroad and in Japan, where the Buraku Liberation Human Rights Research Institute, a non-governmental organization (NGO), strove to improve their situation, on the basis of the principle of the equality of all Japanese. While he acknowledged that Japan had in 1969 instituted measures to better the lot of that ethnic group, he would appreciate more data on the subject. Another matter not mentioned in the report, and on which information would be welcome, was the situation of the inhabitants of Okinawa, of different ethnicity from Japanese and possessing their own language and culture. Formerly an independent country (Ryukyu Kingdom), the island had been discriminated against by the Japanese from the nineteenth century, a fact exacerbated by the presence there of thousands of United States troops.

30. In closing, he invited the Japanese Government to consider making the declaration provided for in article 14 of the Convention to permit the Committee to consider communications from individuals or groups, and to ratify the amendments to the Convention adopted at the 14th meeting of States parties. He drew the delegation's attention to a number of documents submitted to the Committee by Japanese NGOs.

31. Mr. DIACONU said that, although Japan was a modern democracy, it had strong traditions stemming from its insularity and past geographical isolation. It was important that discussion of its initial report should be frank and constructive and that the Government should heed the Committee's comments in an effort to bring its legislation into line with the Committee's recommendations. The report of Japan, which dealt essentially with the pertinent legislation, cited solely article 14 of the Constitution as prohibiting racial discrimination. Did the delegation consider that article 1 of the Convention was adequately covered by that constitutional provision? He also sought clarification of the relationship between the Convention and domestic law and asked whether the Convention could be directly applied in the courts. Although the report stated that international conventions were applicable directly on a case-by-case basis, apparently none of the Convention's provisions had ever been directly applied.

32. The report did not stipulate what penalties were imposed for discrimination regarding the use of public facilities, to cite one example. Inasmuch as other countries enacted comprehensive legislation for all categories of discrimination, the Japanese authorities should supplement theirs, on the basis of the principle that any racially discriminatory act should be punished per se, and not merely if it was deemed contrary to public policy and good morals. Indeed, could any such act fail to run counter to public policy or good morals? According to the report, an act of discrimination was punishable if it entailed a violation of criminal law. But was not such an act in itself a violation of criminal law?

33. Turning to article 4 of the Convention, he expressed doubts about whether Japan's reservation to article 4 (a) and (b) was compatible with the purpose of the Convention. According to the report, Japan fulfilled the obligations under those provisions to the extent that fulfilment was compatible with certain rights (para. 72), yet it had not adopted any law providing for punishment for the acts set out therein, and nothing in the Penal Code (paras. 76-90) made any mention of the element of racial discrimination in any offence. It was as though the Convention did not exist. For most countries, racial discrimination constituted an aggravating circumstance. Did that mean that Japan considered all the obligations stemming from article 4 (a) and (b) to be contrary to its Constitution? If it did, that would explain why there was no such law. But if there were obligations which were compatible with the Japanese Constitution, there must be a law to punish such offences. The absence of any such law meant that for Japan article 4 as a whole was not applicable, despite its being a cornerstone of the Convention. Other countries had formulated such a reservation, but they had also produced legislation clearly punishing acts of racial discrimination as defined in the Convention; moreover, bodies of human rights experts had repeatedly stated that there was no contradiction between making acts of racial discrimination a punishable offence and freedom of expression, association or assembly. According to the International Covenant on Civil and Political Rights, those rights were not absolute and could be the subject of restrictions, and freedom of expression did not allow incitement to national or ethnic hatred. To his knowledge, Japan had not formulated a reservation to the Covenant. The absence of legislation explained why the Governor of Tokyo could repeatedly make discriminatory statements about foreigners with impunity, why xenophobic posters continued to be put up in public places without the authorities intervening and why attacks against Korean students and the dissemination of racist brochures went unpunished.

34. Racial discrimination could be deliberate or unintentional. He questioned Japan's position that respect for human rights by the general public should essentially be enhanced through free speech, and that society itself should eliminate any existing discrimination and prejudice "of its own free will". The State was not alien to society and, as an organ of society responsible for enforcing the law and eliminating discrimination, must intervene and mobilize society in favour of human rights and punish violations, and not wait for the world to improve itself on its own. The application of article 4 therefore remained a subject of concern. The Japanese Government should review the situation, adopt the necessary legislation and withdraw its reservation, or else specify to what extent the provisions of article 4 were incompatible with the Constitution.

35. Regarding the indigenous populations, the report stated (paras. 65-66) that the Hokkaido Former Natives Protection Law and the Asahikawa Reservation Law aimed at stabilizing the lives of the Ainu by granting them land free of charge had not been applied, had lost their raison d'être and were discriminatory. He failed to see how legislation which was meant to defend those groups could be discriminatory. What new legislation had been adopted to protect them, their reservations and their right to land? Paragraph 66 referred solely to the promotion of Ainu culture and traditions. According to NGO reports, in 1991 the Japanese Government had recognized the Ainu as an ethnic group which had existed before Japan had taken possession of their territory. Accordingly, the Ainu must be recognized as an indigenous people in keeping with international standards. What population, if any, did Japan recognize on its territory as an indigenous people? Did Japan intend to ratify International Labour Organization (ILO)

Convention No. 169 on indigenous and tribal peoples in independent countries? Did not the Okinawans, who had their own language, culture and traditions, constitute an indigenous population? According to NGO reports, they were deprived of their culture and traditions and were subject to many acts of discrimination owing to the occupation of the island by the armed forces of the United States of America.

36. As to the Buraku, he pointed out that the Convention was also applicable to discrimination based on descent. It was no surprise that a group that had been isolated and treated differently for such a long time should develop a different culture and have other traditions. The Buraku were a minority group whose culture must be protected. Yet members of the Buraku community were reportedly discriminated against, for example in hiring practices.

37. Concerning the Korean community in Japan, currently estimated at 1 million persons, he asked how many did not have Japanese citizenship and whether they could obtain it if they so desired. Could the Japanese delegation comment on reports from NGOs that such persons must give up their Korean name when they applied for Japanese citizenship? Were the Koreans recognized as a minority in conformity with article 27 of the International Covenant on Civil and Political Rights? As the Japanese Government had already concluded arrangements with the Republic of Korea on the Korean population, it might consider adopting comprehensive legislation to clarify that group's minority status. According to reports, verbal abuse and even acts of violence directed against Koreans were commonplace. The reaction of the authorities in the face of such violence left much to be desired: there had been only three arrests for the 160 assaults reported. Given the size of the Korean minority, why were there no regular Korean-language or bilingual schools?

38. Mr. de GOUTTES stressed the importance of the initial and second periodic reports of Japan and the opening of a dialogue with the Committee. He wished to know whether NGOs had been involved in preparing the report and how the Japanese Government cooperated with NGOs active in the fight against racial discrimination.

39. What was the status of the Convention in the hierarchy of legal norms in Japan? He gathered from paragraph 5 of the report that a domestic law was not required for the Convention to be applicable, but sought clarification of the statement at the end of that paragraph to the effect that direct application was determined on a case-by-case basis, asking how that affected the Convention and whether individuals could invoke the Convention in Japanese courts. Was the phrase "in each specific case" a reference to the distinction often drawn in international law between provisions that were self-executing and those that were not? Which provisions were directly applicable, and which were not?

40. He, too, expressed doubts about Japan's compliance with article 4 (a) and (b) of the Convention. Japanese law apparently contained no specific provisions making the dissemination of ideas based on racial superiority or hatred or racist acts an offence, stipulating that racist motivation constituted an aggravating circumstance, or punishing racist organizations. The Japanese Government needed to review its legislation and introduce texts that were in compliance with article 4 of the Convention and the Committee's General Recommendation XV of 1993 (HRI/GEN/1/Rev.4), which stated that the prohibition of the dissemination of racist

ideas was compatible with the right to freedom of expression. A general principle prohibiting discrimination, as in article 14 of the Japanese Constitution, was insufficient; specific provisions were required making such discrimination a crime.

41. Turning to article 6 and the question of remedies for the victims of racial discrimination, the examples cited in paragraphs 150 and 162 were insufficient. To assess Japan's implementation of the Convention, the Committee needed to have complete statistics on complaints, prosecution and decisions for cases involving racial discrimination; the degree to which acts of racism were prosecuted was a test of a country's willingness to apply the Convention in everyday life.

42. Regarding the situation of vulnerable groups, the Committee attached great importance to economic and social indicators, such as unemployment, housing, access to social services, illiteracy, crime, alcoholism, drug addiction, prostitution and the prison rate of a given social group. Although the report contained information on the Ainu, saying that their situation had improved, paragraph 14 acknowledged that, in 1993, 17.4 per cent of the Ainu had reported having experienced discrimination. The Committee sought information on other indigenous peoples, such as the Okinawan, the Uilta and the Nivkh communities. The Buraku were widely reported by NGOs to be discriminated against in hiring, schooling, marriage and other areas. Such discrimination was based on descent and social class. Could the Japanese delegation provide information on the treatment of the Buraku?

43. Paragraph 51 recognized that there was still discrimination against members of the Korean community. The fact that many Koreans felt compelled to change their names was the sign of a violation of their sense of identity. NGOs had reported many cases of violence against Korean children and students, an inadequate response by the police, pressure to adopt Japanese names, especially when taking Japanese citizenship, and discrimination in hiring, access to social services and participation in local referendums. He asked the Japanese delegation to respond to those reports.

44. Paragraph 31acknowledged incidents of human rights violations against foreigners. The information provided by NGOs was even more disquieting. There had been reports of xenophobic attitudes in the media, which tended to exaggerate the crime rate among foreigners, discrimination in access to public facilities, domestic violence directed against Asian and South American women, exclusion of children of foreign immigrants from schooling, unusually long pre-trial detention for foreigners and violence against foreigners in police stations, prisons and immigration offices. Could the Japanese delegation comment on those assertions?

45. Mr. LECHUGA HEVIA referred first to Japan's reservation to article 4, which to a considerable extent invalidated one of the Convention's most important provisions. The so-called concept of freedom of expression made it possible for racist propaganda to appear in the press, and failure to punish racist organizations allowed them to continue their activities. Paragraph 61 of the report stated that, upon Japan's accession to the Convention, notice had been sent to all officials instructing them to implement that instrument, disseminate its content, give proper guidance and supervision and ensure that no discrimination took place. Had those instructions been complied with?

46. On the subject of the Koreans, the report stated that an agreement had been signed between Japan and the Republic of Korea on Koreans living in Japan. What was the status of people from the Democratic People's Republic of Korea? The case of the Okinawan minority gave cause for concern. How could the Japanese Government prevent acts of discrimination by United States troops against the Okinawan population? How far did its authority reach in preventing discrimination against that minority?

47. Mr. TANG Chengyuan said that the large, high-level delegation reflected the importance that the Japanese authorities attached to the implementation of the Convention. While he welcomed the enactment of the Law for the Promotion of the Ainu Culture in 1997, he noted that the Ainu people had suffered greatly in the past from the failure of the authorities to recognize their status as an ethnic minority. Had any steps been taken to compensate them?

48. Many Koreans who, for historical reasons, had been living in Japan for generations did not enjoy full civil and political rights. There were also reports of unfair treatment of Chinese and South American immigrants. For example, the criminal behaviour of one Chinese immigrant could not justify the public display of a poster urging people to report any sighting of a person who looked Chinese or spoke Chinese to the nearest police station. The periodic report failed to mention the case of returnees from China, i.e. Japanese who had lived in China during the Second World War and who had allegedly suffered considerable hardship on returning to Japan.

49. Japan's scientific and economic success and the resultant inflow of job-seekers had in some cases led to friction between the local population and foreigners. The problem could be addressed through a combination of legal and educational measures. Article 4 of the Convention required States parties to make acts of racial discrimination punishable by law. Japan's reservation on the grounds of freedom of expression was unsound because racist propaganda which caused personal injury to others had nothing to do with freedom of speech. Indeed such conduct was already punishable under the Japanese Penal Code. The hostile remarks by the Governor of Tokyo had led, for example, to the expulsion of foreign factory workers, causing both economic and moral damage to the victims. With regard to educational action, he welcomed the awareness-raising initiatives described in paragraphs 171 to 173 of the report. He feared, however, that a small minority of the Japanese population retained a strong sense of racial superiority, the mentality that had led to the subjugation of Asian peoples during the Second World War. Vigorous educational action was needed to promote respect for the principle of equal treatment for all, regardless of nationality.

50. Mr. PILLAI said that, according to the delegation, the Government had engaged in wide-ranging consultations when preparing its report to the Committee. He was therefore surprised at the discrepancy between the figures provided by NGOs and those contained in the report, and at the absence of any reference in the report to the Buraku people. As the issue of racial discrimination could not be effectively addressed unless accurate facts and figures were available, he urged the State party to ensure that the consultations on future reports were more exhaustive.

51. He hoped that the classification of foreigners on the basis of their residence status, as described in paragraph 21 of the report, was not conducive to discriminatory treatment. He was

concerned to note, for example, that Asians accounted for 91.6 per cent of the total number of registered foreigners in the "entertainer" category. He asked the delegation to explain the apparent contradiction between compulsory schooling and voluntary attendance by foreigners (para. 44).

52. With reference to article 4 of the Convention, he endorsed comments by other members of the Committee on the difference between freedom of expression and freedom to air views that advocated racial hatred. Racially discriminatory acts were described in paragraph 159 of the report as human rights infringements. Had the Council for Human Rights Promotion referred to in paragraph 168 any special responsibility to address such infringements?

53. As noted by previous speakers, discrimination based on descent was covered by the concept of racial discrimination under the Convention. In that connection, he invited the delegation to comment on the situation of the Buraku community.

54. Mr. THORNBERRY observed that the Sub-Commission on the Promotion and Protection of Human Rights had addressed the Buraku and analogous issues at its fifty-second session in 2000. Referring to paragraph 15 of the report concerning the Ainu people, he said that, however commendable welfare measures might be, they sometimes obscured real indigenous issues. He hoped that the cultural dimension of the Ainu question was taken into account. Although the term indigenous people had not been used in the report, the characteristics of the Ainu seemed to place them in that category. He therefore urged the State party to report on issues such as Ainu land rights, sacred sites, traditional knowledge and autonomous institutions in future reports. ILO Convention No. 169 could constitute a benchmark and source of inspiration in that regard, although Japan was not a party thereto.

55. With regard to the use by Koreans of Japanese names as a form of protection against discrimination, he stressed the importance of names in relation to identity. In terms of human rights jurisprudence, minority rights - and he would classify the Koreans as a minority - were quite extensive in respect of names and, for example, language of education. He therefore associated himself with Mr. Diaconu's comment on the need for bilingual education for Koreans. Noting the lack of appropriate legal structures in Japan to address racial discrimination, he questioned whether a programme for the elimination of discrimination could be implemented in practice without the requisite legislation and resulting case law.

56. Ms. JANUARY-BARDILL asked the delegation to explain why the Government had chosen not to conduct ethnically disaggregated population surveys. She was worried about the reference in paragraphs 17 and 18 of the report to the Ainu "problem". Viewing the Ainu people as a problem could distract attention from the real issues involved. Round tables on the Ainu should perhaps be supplemented by round tables on the dominant culture and the way in which it related to the minority group.

57. According to NGO reports, there was no legislation under which discriminatory practices in respect of access to public- and private-sector institutions could be prosecuted and there was no provision for punishment of offenders. Referring to paragraph 29 of the report, she asked for examples of cases in which discriminatory treatment of foreigners in terms of labour conditions had been prosecuted.

58. The report made no reference to gender-based acts of discrimination. She urged the State party to consult the Committee's General Recommendation XXV on gender-related dimensions of racial discrimination when preparing future reports. Korean women were reportedly often the targets of violence based on historical factors and suspicion of Korean nationals irrespective of their length of residence in Japan. What action was being taken to address the issue of human trafficking in women from countries such as Thailand, Colombia, China, the Republic of Korea and the Philippines and to punish those who abused the women? According to NGO reports, some 275,000 foreign wives of Japanese men who were registered as aliens were frequently subjected to domestic sexual violence and were exploited by their husbands. They were afraid to complain for fear of losing their immigration status and alienating their partners. If those allegations were true, they constituted a violation of article 5 of the Convention.

59. Mr. BOSSUYT said that the Ainu should be classified as an indigenous people and treated as such. He noted with surprise the statement in paragraph 21 of the report that only some 7.9 per cent of foreigners were allowed to work in Japan. How did the others manage to survive? According to paragraph 25, almost 300,000 foreigners were residing illegally in Japan. There were apparently plans to expel them from the country. Had such action already been taken and, if so, how many had been expelled and under what conditions?

60. Comparing the figures given in the table in paragraph 53 of the report for the number of applications for refugee status with those in his own country, he asked if the delegation could explain why the number was so small. Was it true that asylum-seekers whose cases were pending were not provided with any means of subsistence by the authorities?

61. Noting that there was no criminal offence of racial discrimination or of incitement to acts of racial hatred, he urged the State party to bring Japanese legislation into line with the Convention in that regard. Was he right in concluding from paragraph 154 of the report that there was no provision for judicial review of administrative decisions concerning immigration?

62. According to NGO reports, the Government intended to suspend in March 2002 the special measures that had been taken on behalf of the Buraku people in July 1969. Did the authorities consider that such action was justified under the circumstances?

63. He wished to know whether the Governor of Tokyo was appointed by the Government or elected. In conclusion, he observed that prisons in Japan were not overcrowded but the discipline imposed was allegedly extremely severe and took no account of cultural differences in the case of foreign prisoners, who suffered greatly under such a regime.

64. Mr. SHAHI strongly urged the State party to incorporate the Convention into Japanese domestic legislation so that appropriate punishments could be prescribed and provision made for remedies and compensation. He joined other members of the Committee in stressing that there was no contradiction between the prohibition of the dissemination of racist ideas and incitement to racial discrimination in the Convention and the right to free speech. Article 19, paragraph 3, of the International Covenant on Civil and Political Rights subjected the right to freedom of expression to certain restrictions.

The meeting rose at 6.10 p.m.